

Internal Revenue Service

Number: **200925027**

Release Date: 6/19/2009

Index Number: 1361.03-03, 1362.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-142598-08

Date:

March 04, 2009

Legend

X:

Trust 1:

Trust 2:

Trust 3:

Trust 4:

Trust 5:

Trust 6:

Trust 7:

State:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Dear :

This letter responds to a letter dated September 25, 2008, submitted on behalf of X, requesting rulings under § 1362(f) of the Internal Revenue Code.

X was incorporated under the laws of State. X elected under § 1362(a) to be an S corporation, effective Date 1. X's S election inadvertently terminated on Date 2 when Trust 1, Trust 2, and Trust 3 became shareholders of X, because the trustees of the trusts failed to make valid electing small business trust ("ESBT") elections for the trusts. X also represents that X's S election would also have terminated when Trust 4 and Trust 5 became shareholders of X, on Date 3 and Date 4 respectively, because the trustees of the trusts failed to make valid ESBT elections for the trusts. Trust 6 and Trust 7 became shareholders of X on Date 5 and the trustees of the trusts made valid ESBT elections for the trusts. However, these elections were ineffective because X's S election had already terminated.

X represents that the terminating event was not motivated by tax avoidance nor retroactive tax planning. X and its shareholders (including all of X's trust shareholders) have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation. Furthermore, X and each person or trust who is or was a shareholder of X at any time since Date 2, have filed their income tax returns consistent with the treatment of X as an S corporation and consistent with the trusts being valid ESBTs.

Section 1362(f) provides that if -- (1) an election under § 1362(a) by any corporation -- (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken -- (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be

required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation election on Date 2 was inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 2 and thereafter, provided X's S corporation election was valid and was not otherwise terminated under § 1362(d). Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6 and Trust 7 will be treated as ESBTs from the date that each trust became a shareholder of X respectively, provided that the trusts are otherwise eligible to be ESBTs, until the trusts' ESBT status terminates.

This ruling is conditioned upon the trustees of the seven trusts filing properly completed ESBT elections for each trust's intended effective date, with the appropriate service center within 60 days following the date of this letter and upon the trusts filing any initial or amended returns that are necessary to comply with this ruling within 60 days following the date of this letter. A copy of this letter should be attached to the ESBT election and any relevant initial or amended return. If Trust does not comply with these conditions, this letter is null and void.

All of X's shareholders in determining their respective income tax liabilities during the termination period and thereafter, must include their pro rata share of the separately stated items of income (including tax-exempt income), loss, deduction, or credit and non-separately stated computed items of income or loss of X as provided in § 1366, make any adjustments to basis provided in § 1367, and take into account any distributions made by X as provided in § 1368.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provision of the Code. Specifically, no opinion is expressed on whether X is otherwise eligible to be treated as an S corporation or trusts' eligibility to be ESBTs.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Melissa C. Liquerman
Chief, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: